

or satisfied the plaintiff, that the personal property so taken in execution would pass to his executor or administrator as parcel of his estate, which should be kept separate, and applied exclusively in satisfaction of the claim for which it had been taken.

But the Act of 1813, ch. 102, s. 1, has provided somewhat differently for this matter, by declaring, that where it appears by the return of the late sheriff, that the real or personal property so taken by him had not been sold, the Court may, on motion, order a *venditioni exponas* to the new sheriff, upon which the property, which had been so seized, may be taken wherever found, and sold as upon the original execution.

This provision, however, extends only to cases where it appears by the return, that the property taken in execution specifically remains unsold; and therefore, where it does not so appear, or where the sheriff had made sale and died before the money was brought in or paid to the plaintiff, there, as the property or money in his hands had passed to his personal representatives, they must be held liable to the plaintiff for whose benefit the execution issued. And although no action can be maintained against the executor of a sheriff grounded on the misfeasance or breach of duty of his testator, yet the plaintiff may recover of the executor of the sheriff, in an action of debt, any money which he had levied under a *fiery facias* and had not paid over. *Clerk v. Withers*, 6 Mod. 299; *Adair v. Shaw*, 1 Scho. & Lefr. 265. In Maryland the plaintiff would be allowed to recover his debt by a suit upon the sheriff's bond, and then the sureties who had thus been compelled to pay the debt would have a right to take the place of the plaintiff as against the representatives of the sheriff.

Upon analogous principles, on the death of a receiver appointed by this Court, it appears to be clear, that in so far as he had a mere duty to perform, like that of a sheriff in safely keeping his prisoners, nothing could devolve upon his representatives; but that where he had acquired a qualified interest in personal property as a bailee, and which it was his duty to keep apart from his own, and account for; and where he had, in obedience to an order, sold and converted property into money, such property and money must be considered as having rightfully passed into the hands of his personal representatives, as the only, or the most sure means of saving \* harmless the estate of the deceased from the liability to which he had subjected it, by becoming bound **438** as a receiver. *Shelf. Lun.* 151.

Hence considering the property and money which the late receiver Jacob Schley had admitted to be in his hands, as having passed into the hands of his administrators, they must be viewed as standing in all respects in his place: and as the personal representatives of their intestate, there can be no more impropriety in proceeding against them in this Court by an order *nisi*, followed